

IN THE HIGH COURT OF GUJARAT AT AHMEDABAD

SPECIAL CIVIL APPLICATION No 3964 of 1996

For Approval and Signature:

Hon'ble MR.JUSTICE M.R.CALLA

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1. Whether Reporters of Local Papers may be allowed to see the judgements?
2. To be referred to the Reporter or not?
3. Whether Their Lordships wish to see the fair copy of the judgement?
4. Whether this case involves a substantial question of law as to the interpretation of the Constitution of India, 1950 of any Order made thereunder?
5. Whether it is to be circulated to the Civil Judge?  
1 to 5 No

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DEVABHAI NAJABHAI BHARWAD

Versus

DISTRICT MAGISTRATE

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Appearance:

Mr. R.C. Kodekar for MR VIJAY H PATEL for Petitioner  
Mr. Nigam Shukla, learned Asst.G.P. for the respondents.  
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CORAM : MR.JUSTICE M.R.CALLA

Date of decision: 02/11/96

ORAL JUDGMENT :

1. This Special Civil Application is directed against the detention order dated 24-4-96 passed by the District Magistrate, Bhavnagar detaining the petitioner under the provisions of Gujarat Prevention of Anti Social Activities Act, 1985 (hereinafter referred to as 'the Act'). The detention order was executed on 28-4-96 and since then the petitioner is under detention lodged at

Porbandar Special Jail, Porbandar.

2. This Special Civil Application was filed in this Court on 10-6-96 and on 11-6-96 Rule returnable on 27-6-96 was issued by this court. But so far neither any reply has been filed on behalf of the respondents nor any affidavit of the detaining authority has been filed.

3. The grounds of detention enclosed with the detention order show that three criminal cases were registered against the petitioner and after noticing the allegations of these three cases for offences under S.324, S.504 and S.114 IPC and S.135 of the Bombay Police Act; S.147, S.148, S.149 S.332 and S.307 IPC and S.135 of the Bombay Police Act the detaining authority has taken into consideration the statements of 3 witnesses made against the petitioner against his anti social and criminal activities and has also noticed that the witnesses were frightened and afraid of the petitioner and further that the petitioner has been using weapons, has been causing serious injuries to the witnesses and has been beating innocent persons, has been keeping weapons like sword, Gupti, Chhari, stick, hockey etc. The detaining authority has also noticed that the proceedings of externment will not be sufficient to prevent the petitioner from continuing his anti social activities and that he is a dangerous person. Accordingly the detention order was passed.

4. The learned counsel for the petitioner has submitted that the petitioner had been arrested in connection with C.R. No.4/96 on 16-1-96 and was under judicial custody at the time when the detention order was passed, but the detaining authority has not taken notice of all these facts. Besides these, it has also been submitted that the allegations and materials, which have been used against the petitioner, even if taken to be true, do not amount to a case of breach of public order and it is at the most a case of breach of law and order. Mr. Nigam Shukla, learned Asst. G.P. has stated on the basis of the record available with him that there are no papers to show that the petitioner had been granted bail and there is no reference in the detention order about the petitioner's being in the custody on the basis of his arrest made on 16-1-96 at the time of the passing of the detention order.

5. Whereas the fact remains uncontroverted that the petitioner was in custody on the basis of his arrest dated 16-1-96 and this fact had not been taken notice by the detaining authority at the time of passing the

detention order and whereas it is found that the allegations relied upon by the detaining authority against the petitioner do not constitute a case of breach of public order, in view of the reasons given in the decision dated 4-10-96 in Special Civil Application No.3879/96 and in view of the law laid down by the Supreme Court in M.J. Shaikh v. M.M. Mehta, C.P., reported in 1995 (2) GLR 1268 the detention order can not be sustained in the eye of law and deserves to be set aside.

6. Accordingly, the Special Civil Application is allowed. The impugned detention order dated 24-4-96 passed by the District Magistrate, Bhavnagar is hereby quashed and set aside and the petitioner's detention is declared to be illegal. The petitioner may be released and set at liberty subject to the condition that he is not required in any other case. In case he is under arrest with reference to C.R. No.4/96 or any other criminal case, he shall not be released unless he is granted bail by the concerned court/courts. Rule is made absolute.